

### REMARKS

In the Action it is stated that claims 12-31 are pending; however, Applicants canceled claims 22 and 24 in the previous response to the Office Action dated July 18, 2002. Thus, claims 12-21, 23, and 25-31 are pending. Applicants have amended claims 12, 13, 17, 26 and 29. Support for this amendment appears throughout the specification and claims as originally filed. No new matter is introduced by this amendment. Applicants make this amendment in order to expedite prosecution of these claims. Applicants make such amendments without prejudice to pursuing the originally presented or canceled subject matter in a later application claiming benefit of this application, and particularly without prejudice to determination of equivalents of the subject matter of this application or any later application claiming benefit of this application.

#### Rejection Under 35 U.S.C. § 103(a)

Claims 12-31 are rejected as unpatentable over Mehansho et al. (US Patent 4,992,282), in view of Clark (U.S. Patent 5,376,396), and Calderas (U.S. Patent 5,431,940) and Pflaumer et al. (U.S. Patent 5,641,532), and further in view of Wallin (U.S. Patent 4,211,577), Stahl (U.S. Patent 4,775,477), Norris (U.S. Patent Publication 2002/001651 A1), and Yanko (Russian Patent Publication 2114168 C1).

Applicants' claimed (as amended herewith) compositions comprise a cranberry UTH extract, whose composition, benefits and use are distinct from the composition, function and use of the extracts in each of the cited references. The cited references all relate to extracts for flavoring or coloring purposes. Applicants' UTH extract (Specification at page 12, line 8 and lines 10-11, and examples) is not used for coloring or flavoring purposes; rather it is used for urinary tract health benefit, which is based on the proanthocyanidin content. The extracts of the cited references and Applicants' UTH extract are thus different in form and function.

First, none of the cited references suggests any particular proanthocyanidin content in any cranberry extract. Yanko, Wallin and Stahl do not mention proanthocyanidins; and in fact, Wallin and Stahl, as they relate to coloring agents, focus on anthocyanin content in their extracts,

which anthocyanins are the agents responsible for coloring but not UTH benefit. Norris does not describe any cranberry extract with any particular proanthocyanidin content either. Moreover, extracts such as those described in the cited references typically have about 1% proanthocyanidin content. This contrasts with the cranberry UTH extract described in Applicants' specification and examples, which has about 3 to 4% proanthocyanidin content. The UTH extract used in the examples and referenced at page 12, line 8 and lines 10-are neither described nor suggested in the cited references.

Second, the exemplified cranberry UTH extract described in Applicants' specification has at least 3 times the levels of proanthocyanidins compared to a typical cranberry extract. The use of the exemplified UTH extract is particularly advantageous as the resulting beverage has the urinary tract health benefits of a higher calorie juice drink (e.g., a 27% juice cranberry juice cocktail) but reduced amounts of sweetener (i.e., sucrose, fructose) can be used, thus making it a lower calorie drink compared to a typical cranberry juice cocktail. This is because typical levels of cranberry juice needed to achieve this urinary tract health benefit (i.e., that in a 27% juice cranberry juice cocktail) also impart a very astringent flavor to the beverage that must be modified with higher amounts of sweetener (i.e., sucrose, fructose). Use of the exemplified cranberry UTH extract that has about 3-4% proanthocyanidin content (i.e., having over triple (3X) the proanthocyanidin content of a typical cranberry extract) provides a beverage that has less cranberry juice in it, and consequently, less sugar in it (because a lesser amount of the astringent cranberry juice is used); yet because of the boost in proanthocyanidin content provided by the exemplified cranberry UTH extract, this lower calorie beverage has the UTH health benefit of a higher sugar, higher calorie cranberry beverage (i.e., the 27% juice cranberry cocktail).

Because none of the cited references teach or suggest the desirability for Applicants' claimed cranberry extract having about 3-4% proanthocyanidin content (not to mention the aforementioned advantageous and superior properties of this extract relative to a typical cranberry extract having about 1% proanthocyanidin content), Applicants submit that the claims

Applicant : Hynes et al.  
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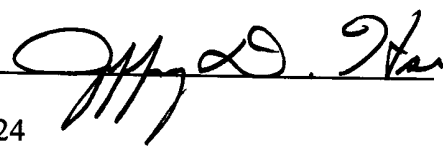
(as amended) are not rendered obvious by the cited art. Applicants respectfully request that the rejection be withdrawn.

Applicants submit that based on the foregoing amendments and remarks, the claims are in condition for allowance. The Examiner is requested to telephone Applicants' undersigned representative to discuss any issues should the claims not be found to be allowable. Applicants thank the Examiner in advance for this courtesy.

Enclosed is a check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050, referencing attorney docket number 00414-062001.

Respectfully submitted,

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